

PT 98-20

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE MOODY CHURCH,
APPLICANT**

v.

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE**

Docket No: 94-16-969

Real Estate Exemption

**For 1994 Tax Year
P.I.N. 14-33-424-004**

Cook County Parcel

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Willard N. Nyman on behalf of the Moody Church.

SYNOPSIS

This proceeding raises the limited issue of whether Cook County Parcel Index Number 14-33-424-004 (hereinafter the “subject property” or “subject parcel”) should be exempt from 1994 property taxes as “property used exclusively for religious purposes” under Section 15-40 of the Property Tax Code.¹

¹ In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable provisions are those found in section 15-40 of the Property Tax Code (35 ILCS 200/15-40 (1994)).

This controversy arose as follows:

On October 26, 1994, The Moody Church (hereinafter “Moody” or “applicant”) filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the “Board”). Dept. Group Ex. No. 1, Doc. B. The Board reviewed the complaint and on April 26, 1995, recommended that an exemption be granted for 68% of the 1994 tax year. On February 23, 1996, the Illinois Department of Revenue (hereinafter the “Department”) declined to follow the Board’s recommendation and denied the exemption concluding that Moody did not demonstrate that the property was in exempt use, or being prepared for exempt use, in 1994. Moody filed a timely appeal seeking to have the subject property exempted for the entire 1994 tax year. On May 1, 1997, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence, it is recommended that the subject parcel be granted a property tax exemption for 33% of the 1994 tax year.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department’s jurisdiction over this matter and its position that the subject parcel was not in exempt use, or being prepared for exempt use, in 1994.
2. The subject parcel is located at 1637 N. LaSalle Street in Chicago. Dept. Gr. Ex. No. 1.
3. The subject property is improved with a brick building. Tr. pp. 16, 46.
4. Prior to April 29, 1994, Violet Yakas owned the subject property and operated a flower shop on the premises. Tr. p. 15.

5. On April 29, 1994, Ms. Yakas transferred titled to the subject property to Chicago Title and Trust Company Trust No. 1099773. App. Ex. No. 1.
6. Moody is the beneficiary of Trust No. 1099773. App. Ex. No. 2.
7. Moody is a religious organization that both the IRS and the Department have previously recognized as being organized and operated exclusively for religious purposes. App. Ex. Nos. 5, 6, 8, 9, 10.
8. On January 2, 1994, blueprints were prepared for renovation of the subject property. These plans related to the conversion of the building located on the subject property into a Sunday school for Moody. App. Ex. 11.
9. Through most of the summer of 1994 Ms. Yakas was allowed to store personal and business items at the subject property. Tr. pp. 15-16.
10. In September of 1994, Moody began gutting the building so that it could be renovated. Tr. p. 15.
11. By the end of 1994, the building had been gutted and some remodeling materials were stored on the premises. Tr. p. 18.
12. A building permit was obtained on April 27, 1995. App. Gr. Ex. 12.
13. Building began in earnest in October of 1995. Tr. p. 19.
14. Construction was complete by December of 1995. Tr. p. 19.
15. Some Sunday school meetings had been held in the building in 1995 prior to the completion of the renovation work. Tr. p. 20.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an

exemption for 33% of the 1994 tax year. In support thereof, I make the following conclusions:

Prior to 1909, the law required that religious property exemptions would be granted only if the party using the property for religious purposes also owned the property. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). Since that time however, statutory changes have eliminated the ownership requirement except in cases involving parsonages. *Id.* Section 15-40 of the Property Tax Code now provides, “All property *used* exclusively for religious purposes *** is exempt[.]” (Emphasis added.) 35 ILCS 200/15-40 (1996). Thus, today the main prerequisite for a religious property tax exemption is not ownership, but rather whether the property in question was used exclusively² for religious purposes. Sunday school is a religious activity and therefore an exempt use. See Scripture Press Foundation v. Annunzio, 414 Ill. 339 (1953). Accordingly, the only real issue is at what point in 1994, if ever, did Moody begin to use the subject property as a Sunday school.

“Intention to use is not the equivalent of use.” Skil Corp. v. Korzen, 32 Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill. App. 3d 572 (1977).

² The word “exclusively,” when used in Section 15-145 and other tax exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Gas Research Institute v. Department of Revenue, 145 Ill. App. 3d 430 (1987); Pontiac Lodge No. 294, A.F. & A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (1993).

It must therefore be determined whether Moody's activities in 1994 constituted actual development and adaptation for use as a Sunday school, or merely an intention to develop the property for such use.

Moody contends that actual development began in January of 1994, when blueprints for converting the building were first drafted. However, Ms. Yakas continued to own the building until April 29, 1994 and was allowed to use the building for storage until August of 1994. Moreover, physical adaptation of the building did not begin until September of 1994. Under these circumstances, I conclude that between January of 1994 and September of 1994, Moody's blueprints were preliminary plans and reflected "a mere intention to convert the property for an exempt use." Weslin Properties Inc. v. Dep't of Revenue, 157 Ill App 3d 580, 586 (1987).

By September of 1994, Ms. Yakas had removed her stored items and "the actual process of development and adaptation for exempt use" began with Moody gutting the building. *Id.* at 584. Merely because Moody did not actually obtain a building permit until April 27, 1995, does not mean that the process of development and adaptation did not begin until that date. Here, the adaptation process necessarily included a preliminary gutting of the building. To conclude otherwise would ignore "the realities of modern construction practice." *Id.* at 586. Accordingly, the Department's decision completely denying the exemption should be partially reversed so as to allow for exemption for that portion of 1994 during which the subject property was being adapted for religious use.

WHEREFORE, for the reasons stated above, I recommend that the subject parcel be exempt from real estate taxes for 33% of the 1994 tax year which represents that

period from September 1, 1994 through December 31, 1994, during which the subject property was in the process of development and adaptation for religious use.

Date

Robert C. Rymek
Administrative Law Judge